Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

NO. 76-1208

LOUIE L. WAINWRIGHT, Secretary,
Florida Department of Offender
Rehabilitation,

Petitioner,

vs.

NATHANIEL PRESSLEY,

Respondent.

* * * * * * * * * * * * * *

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

* * * * * * * * * * * * * *

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IN THE
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NO.

LOUIE L. WAINWRIGHT, Secretary,
Florida Department of Offender
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vs.

NATHANIEL PRESSLEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Petitioner, LOUIE L. WAINWRIGHT, prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered on October 15, 1976.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit appears

in the Appendix hereto, and is reported at 540 F.2d 818.

JURISDICTION

The opinion of the United States Court of Appeal was entered on October 15, 1976. A petition for rehearing or rehearing en banc was timely filed. Said petition was denied on November 22, 1976. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

WHETHER COURT APPOINTED COUNSEL'S FAILURE TO OBTAIN POST APPELLATE DISCRETIONARY REVIEW CONSTITUTES A DEPRIVATION OF A FEDERAL CONSTITUTIONAL RIGHT SO AS TO JUSTIFY THE GRANTING OF HABEAS CORPUS RELIEF?

STATEMENT OF THE CASE

Respondent and Andre Rhymes were indicted for the crime of murder in the first degree. (R. 24). A joint trial by a jury, resulted in the conviction of both defendants and imposition of sentences of life imprisonment. (R. 25). Pressley and Rhymes filed separate appeals (consolidated for argument) in the District Court of Appeal, Third District, which affirmed both convictions. Pressley v. State, 261 So.2d 522 (Fla. 3d DCA 1972) and Rhymes v. State, 261 So.2d 527 (Fla. 3d DCA 1972).

Rhymes' counsel thereafter filed a petition for writ of certiorari in the Florida Supreme Court which was denied. Rhymes v. State, 268 So.2d 535 (Fla. 1972). Pressley's counsel declined to file a petition for writ of certiorari but suggested that the

public defender be contacted. Pressley wrote a letter dated May 31, 1972, (no date is shown to indicate when the letter was received) to the public defender asking for such assistance. (R. 36). On June 28, 1972, a Stipulation and Motion to Substitute Counsel was filed (R. 37 and 38) and on July 3, 1972, the public defender was appointed. (R. 39).

The public defender thereafter filed a petition for writ of habeas corpus in the Supreme Court of Florida which was denied. Pressley v. Wainwright, Fla. Case No. 42,684, decided November 28, 1972. (R. 43). A petition for writ of habeas corpus was later filed in the United States District Court, Southern District of Florida, which denied relief. Pressley v. Wainwright, Case No. 73-737-CIV-JE, Order Dismissing Petition filed June 27, 1973. Appeal was

taken to the court of appeal which affirmed the dismissal on grounds of lack of exhaustion of state remedies. Pressley v. Wainwright, 493 F.2d 894 (5th Cir. 1974).

The public defender filed, in the Supreme Court of Florida, a Motion for Leave to File Belated Application for Certiorari, which was denied. Pressley v. Wainwright, Fla. Case No. 42,684, Order, July 22, 1974. (R. 48). Habeas corpus was again applied for in the United States District Court (R. 1-7) which granted relief. (R. 116-118). Petitioner then appealed to the court of appeal, which rendered the opinion giving rise to the instant petition.

REASON FOR GRANTING THE WRIT

The Decision Below Is In Conflict With The Decision Of This Court In Ross v. Moffitt, 417 U.S. 600 (1974).

In Ross v. Moffitt, supra, this Court was faced with the question of whether an indigent defendant who has been convicted of a crime, had a constitutional right to the appointment of counsel for the purpose of seeking post appeal, discretionary review in the State Supreme Court (and in this Court). Moffitt was represented by appointed counsel at trial and on direct appeal to the North Carolina Court of Appeal. After the appeals court affirmed the conviction, instead of filing a petition for writ of certiorari to the North Carolina Supreme Court, Moffitt's court-appointed counsel approached the lower court about possible appointment to represent Moffitt, and was denied. This Court considered and rejected the contention that either the Due Process Clause or the Equal Protection Clause of the

Fourteenth Amendment required that a state provide counsel for indigent defendants seeking discretionary appeals to the State Supreme Court. Accordingly, this Court held that Moffitt "was denied no rights secured by the Federal Constitution when North Carolina refused to provide counsel to aid him in obtaining discretionary appellate review." Id. at 417 U.S. 619.

The decision of the court of appeal below attempts to distinguish Ross v. Moffitt by pointing out that Moffitt's counsel was denied permission to represent Moffitt in the Supreme Court of North Carolina, whereas in the instant cause, the substitution of counsel was granted. Petitioner submits, however, that this difference creates no distinction at all.

While the Motion to Substitute Counsel

(R. 37) and Stipulation attached thereto (R. 38) indicate that the request for the substitution was for the purpose of filing a petition for a writ of certiorari in the Supreme Court of Florida, the Order approving the substitution (R. 39), could not and did not specify that the substitution was for that purpose. The substitution of counsel could have no effect on the filing of a petition for certiorari, since the time for filing had already expired four days prior to the making of the motion to substitute counsel. Hence, the order of the District Court of Appeal simply indicated that the Public Defender of Dade County is substituted as counsel of record, presumably, to seek whatever relief was then available, such as a motion to mitigate pursuant to Rule 3.800(b) Fla. R.Crim.P.

Moffitt's court-appointed counsel was unable to secure permission to file a petition for a writ of certiorari, although he took affirmative steps in an attempt to do so. Respondent's counsel was likewise unsuccessful. In neither instance was the accused deprived of any rights secured by the United States Constitution. The Florida courts have indicated that appointed counsel has discharged his and the State's constitutional duty when the right of review by means of direct appeal has been completed. see Cox v. State, 320 So.2d 449 (Fla. 4th DCA 1975); see also, Rhome v. State, 293 So.2d 761 (Fla. 3d DCA 1974). Accordingly, relying on Ross v. Moffitt, the lower federal courts have held that neither the failure of appointed counsel to advise his client of his right to seek post direct appellate review, nor the failure of

counsel to seek that review, presents a claim of constitutional magnitude, justifying habeas corpus relief. Morgan v. Yancy County Department of Corrections, 527 F.2d 1004 (4th Cir. 1975); United States ex rel. Cadogan v. LaVallee, 502 F.2d 824 (2d Cir. 1974); Ardister v. Hopper, 500 F.2d 229 (5th Cir. 1974).

Mr. Engel received no life time appointment. He was appointed solely for the purpose of representing respondent on his direct appeal. (R. 26). That appointment terminated simultaneously with the rendering of the order of the District Court of Appeal, denying a petition for rehearing. (R. 35). Respondent had no right under the State or Federal Constitution to expect that counsel would automatically be appointed to represent him in any discretionary or post-conviction

application. Ross v. Moffitt, supra; Hooks v. State, 253 So.2d 424 (Fla. 1971). Pressley is shown, by his letter to Mr. Hubbart, to clearly know that Mr. Engel would not continue to represent him. (R. 36).

There is no allegation that Pressley made known (during the time for the filing of a petition for certiorari) to either the District Court of Appeal or the Florida Supreme Court, any suggestion of a desire to have new counsel appointed for the purpose of filing a petition in the Supreme Court. To hold that a defendant is entitled to expect any legal service from one who he knows not to be his legal counsel is simply to ignore the realities of everyday life. The public defender's office simply cannot be faulted for having failed to file a petition for a writ of certiorari on behalf of one who was not a

client, and did not become a client until July 3, 1973 (R. 39), after the time had expired for the taking of a petition for certiorari.

Yet even were it to be assumed that either the original counsel or the public defender did not render completely effective assistance to the respondent, is habeas corpus relief proper? Petitioner submits not. The scope of habeas corpus is limited to a review for violations of federal constitutional standards. Milton v. Wainwright, 407 U.S. 371 (1972). It is not the function of the federal court sitting in habeas corpus to search for the "achilles heel" in every state court proceeding. Nees v. Culbertson, 406 F.2d 621 (5th Cir. 1969). Accordingly, a showing of ineffectiveness which does not amount to a failure of constitutional magnitude

does not justify habeas corpus relief. United States ex rel. Marcelin v. Mancusi, 462 F.2d 36 (2d Cir. 1972).

The failure of the public defender or Mr. Engel as appointed counsel, to secure permission to file a petition for a writ of certiorari is no more or less ineffective representation of counsel than was the failure of Moffitt's appointed counsel to secure similar relief for his non client. The loss of the right to take a discretionary appeal, i.e., a petition for certiorari, does not deprive respondent of any federal constitutional right, Ross v. Moffitt, supra; Cadogan v. LaVallee, supra, so as to justify the granting of habeas corpus relief.

CONCLUSION

Because of the importance of the question presented and because of the conflict between the decision of the court below and the decision of this Court in Ross v. Moffitt, supra, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

JOEL D. ROSENBLATT
Assistant Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari was furnished by mail to the HONORABLE BENNETT BRUMMER, Public Defender, 11th Judicial Circuit of Florida, 1351 N. W. 12th Street, Miami, Florida 33125, this_____day of February, 1977.

ROBERT L. SHEVIN
Attorney General

JOEL D. ROSENBLATT
Assistant Attorney General

APPENDIX

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Pressley v. Wainwright,
Fifth Circuit Case No. 75-3861,
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November 22, 1976..... B

Nathaniel PRESSLEY,
Petitioner-Appellee,

v.

Louie L. WAINWRIGHT, Secretary, Department of Offender Rehabilitation,
Respondent-Appellant.

No. 75-3861
Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Oct. 15, 1976.

Florida prisoner petitioned for federal habeas corpus relief. The United States District Court for the Southern District of Florida, at Miami, Joe Eaton, J., entered a judgment conditionally granting writ and the State of Florida appealed. The Court of Appeals, Brown, Chief Judge, held, inter alia, that indigent prisoner's right to petition for writ of certiorari to Florida Supreme Court was frustrated because he was denied effective assistance of counsel when court-appointed counsel informed prisoner of the termination of relationship and prisoner then requested, within time to petition for certiorari from the affirmance of his conviction by the Florida District Court of Appeal, for representation by public defender but substitution was of counsel was not timely made.

Affirmed.

1. Criminal Law ⇐641.13(7)
Habeas Corpus ⇐112

Where indigent Florida prisoner after denial of request for a rehearing on decision of Florida District Court of Appeals affirming his conviction received letter from court-appointed counsel stating that he should request public defender to represent him for any future review and prisoner made timely request for representation by public defender but substitution of counsel was not made until after expiration of the 30-day limit for petition for certiorari, prisoner's right to petition for certiorari was frustrated by denial of effective assistance of counsel and federal district court, on petition for writ of habeas corpus, properly required Florida to either allow belated application for certiorari or to set aside conviction and grant new trial. 32 West's F.S.A. Florida Appellate Rules, rule 4.5, subd. c(6).

2. Attorney and Client ⇐112

Attorney who agrees to undertake task of petitioning Florida Supreme Court for writ of certiorari makes a hollow commitment when he does not exercise care to preserve that right. 32 West's F.S.A. Florida Appellate Rules, rule 4.5, subd. c(6); 32 West's F.S.A. Code of Ethics, rule B, §§ 1 et seq., 1, subds. 4, 44.

3. Habeas Corpus ⇐45.2(1)

Failure of either court-appointed counsel, seeking to terminate attorney-client relationship with prisoner following affirmance of his conviction by Florida District Court of Appeals, or public defender, requested by prisoner to obtain review by Florida Supreme Court by certiorari, or both to make timely petition for certiorari was sufficient state action to authorize federal habeas corpus relief with respect to state prisoner. 32 West's

* Rule 18, 5 Cir.; see *Isbell Enterprises, Inc. v. Citizens Casualty Company of New York et al.*, 5 Cir., 1970, 431 F.2d 409, Part I.

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F.S.A. Florida Appellate Rules, rule 4.5, subd. c(6); 32 West's F.S.A. Code of Ethics, rule B, §§ 1 et seq., 1, subds. 4, 44.

4. Courts ⇐281

Federal courts will not consider a case of controversy of nonconcrete or hypothetical nature and it must be a real and substantial controversy admitting of specific relief through decree of conclusive character, as distinguished from an opinion advising what law would be upon a hypothetical state of facts.

5. Attorney and Client ⇐166

Attorney's duty to client does not necessarily and immediately end or begin with discrete formality of a letter or motion, and somewhat more passive, yet affirmative, duties may remain or arise over the client representation continuum when there is possible prejudice to a prisoner's case.

Appeal from the United States District Court for the Southern District of Florida.

Before BROWN, Chief Judge, and GEWIN and MORGAN, Circuit Judges.

JOHN R. BROWN, Chief Judge:

Once more Nathaniel Pressley's case comes before this Court for review of the District Court's disposition of this prisoner's petition for a writ of habeas corpus.[1] This time we affirm the District Court's conditional grant of a writ order.[2]

[1] In succinct fashion, Prisoner was convicted in Florida of first degree murder. Because of his impecunious nature, Prisoner had court-appointed counsel for his direct appeal to the District Court of Appeals, Third District, which by a split panel affirmed the conviction.[3] Under Florida Appellate Rule 4.5[c][6], 32 F.S.A., to preserve review by the Florida Supreme Court, Prisoner had to file a petition for certiorari within thirty days of rendition of the applicable order, decision, or judgment of the District Court of Appeals. For Prisoner's certiorari petition, May 24, 1972, the date his motion for rehearing before the Florida District Court of Appeals was denied, is the relevant date under Rule 4.5[c][6].

On May 31, only seven days after the rehearing denial, Prisoner received a letter from his court-appointed counsel which informed him that he should request the Public Defender for Dade County to represent him for any future review and that the court-appointed counsel would no longer represent him.[4] On the same day, Prisoner wrote to the Public Defender requesting representation. His request was favorably received, but representation was conditioned to begin from the time that the Public Defender would be properly substituted as counsel. Between the time from denial of the rehearing motion, May 24, and the date on which Prisoner received notice that he should request other counsel to represent him for certiorari purposes, May 31, the same day that he made such a request to the Public Defender, only seven calendar days had passed—well within the thirty day limit imposed by Rule 4.5[c][6], Fla.App.Rules, 32 F.S.A. Not until June 28, 1972, was the substitution motion filed with the Florida District Court of Appeals and the motion was not granted until July 3. Both actions were outside the thirty day limit.[5]

[2, 3] Despite the record's silence regarding the reason for failure to file the motion for substitution and, more importantly, to protect Prisoner's right to *seek* certiorari, decision of this dispute does not rest with this silence or with an awakening burst of explanations that have not come forth. The mere failure to act is sufficient. Clearly, Prisoner timely indicated his intention to seek review by the Florida Supreme Court. Within the fateful deadline imposed by Rule 4.5[c][6], both the court-appointed counsel and the Public Defender were cognizant of Prisoner's desire and the time constraint. In contrast, Prisoner was unaware of this filing time and was relying on the respective attorneys to complete the substitution of counsel and to protect his right to request a writ of certiorari.[6]

From this background, the state's brief creates an argument using as its

1. Prior to this appeal by the State of Florida, Prisoner had sought habeas relief after indirect denial—mere refusal to release Prisoner—by the Florida Supreme Court on November 28, 1972, of his writ of habeas corpus requesting to file "a belated petition for certiorari". *Pressley v. Wainwright*, Fla., 1972, No. 42,684. The Prisoner proceeded to petition the federal court system for a similar writ. This petition was dismissed on the merits by the District Court. *Pressley v. Wainwright*, S.D.Fla., 1973, No. 73-737-CIV-JE. This Court in *Pressley v. Wainwright*, 5 Cir., 1974, 493 F.2d 894, affirmed the dismissal based on Prisoner's failure to exhaust state remedies. In light of our opinion and subsequent to it, counsel for Prisoner filed before the Florida Supreme Court a motion for leave to file a belated petition for certiorari. By an unilluminating order the Florida Court stated: "The motion for leave to file belated application for certiorari filed by counsel for Nathaniel Pressley is denied." *Pressley v. Wainwright*, Fla., 1974, No. 42,684. On March 19, 1975, Prisoner returned to the Southern District of Florida seeking habeas relief. In its order of June 30, 1975, the District Court found that the Prisoner had exhausted his state remedies and conditionally granted the writ. *Pressley v. Wainwright*, S.D.Fla., 1975, No. 75-420-CIV-JE. From this order, Florida appeals.

2. The order requires the State of Florida either to allow a belated application for certiorari or to set aside the conviction and grant a new trial within a reasonable time. Under the order Florida has the option to follow either one of these alternatives.

3. *Pressley v. State*, Fla.App.3d, 1972, 261 So.2d 522.

4. The record does not indicate whether Prisoner had previously requested that his court-appointed counsel represent him for certiorari purposes and that his attorney *at that instant* responded with the May 31 letter. Nor does the record indicate whether the court-appointed counsel's letter was self-initiated with the two-fold purpose of informing Prisoner of his right to seek review by certiorari and the termination of their client-attorney relationship for purposes of seeking such review. This Court's opinion in *Pressley v. Wainwright*, 5 Cir., 1974, 493 F.2d at 895, however, indicates that the court-appointed counsel was aware of Prisoner's desire prior to the May 31 letter.

5. Again, the record is conspicuously absent any factors elucidating the reason—or lack of—for this delay.

6. This Court does not address the question of which attorney or attorneys bore the responsibility to timely complete the substitution of counsel, to protect Prisoner's right to seek review of his conviction, or both. During the time this case was before the Florida Courts, the Code of Ethics, Rule B, 32 F.S.A. regulated practice of attorneys in Florida. This Code promulgated by the Florida Supreme Court indicates that counsel for an indigent prisoner should "*always* exert his best efforts in his [client's] behalf" and that an attorney should not withdraw from representation of the unfinished task ". . . to the detriment of his client except for reasons of honor or self-respect." See Fla.Code of Ethics, Rule B subd. 4, subd. 44, 32 F.S.A. Similarly, one who agrees to undertake the task of petitioning the Florida Supreme Court for a writ of certiorari makes a hollow commitment when he does not exercise care to preserve that right. From training and reason, the parameter of a vigilant lawyer's responsibility is apparent.

In all events, failure of either or both was state action sufficient under *Fitzgerald v. Estelle*, 5 Cir., 1974, 505 F.2d 1334 (en banc), overruling, 1973, 479 F.2d 420.

base *Ross v. Moffitt*,[7] in which the Supreme Court held that Moffitt ". . . was denied no rights secured by the Federal Constitution when North Carolina refused to provide counsel to aid him in obtaining discretionary appellate review." The keystone of this argument is the statement that "*if*" Prisoner's motion to substitute counsel had been denied, he would have been in the same situation as Moffitt. With these two structural points identified, the construction of the state's theory proceeds by arguing that no later than from the time Prisoner received notice of his court-appointed counsel's intention to withdraw from further representation, May 31, until the completed substitution of counsel on July 3, Prisoner was without an attorney. As a consequence, regardless of the substitution of counsel motion on June 28, Prisoner's predicament is identical to Moffitt's: he was without counsel during the filing time and no duty to appoint counsel existed on the state of Florida for discretionary review.[8]

[4, 5] As an arch falling when its keystone is removed, likewise, the State's argument fails. Because Prisoner's motion to substitute was granted, the binding together factor of this argument is nonexistent.[9] Furthermore, the base of the argument gives way under close scrutiny. No issue regarding failure to provide discretionary review exists. The record indicates that Prisoner's court-appointed attorney recommended that he ask the Public Defender to undertake his representation *and* that the Public Defender agreed to do so *within the thirty-day period in question*. Realization of these two defects in the argument relegates it to the status of a "whims of fate" argument relying on the remaining proposition that Prisoner was without an attorney from at least May 31 to July 3.[10] Unlike Shakespeare's epithet, "Let

7. *Ross v. Moffitt*, 1974, 417 U.S. 600, 619, 94 S.Ct. 2437, 2448, 41 L.Ed.2d 341, 356.

8. Florida's brief does not explicitly state that Prisoner was without counsel for the entire thirty-day period. However, to argue no duty to appoint counsel for discretionary review under *Moffitt's* facts implicitly assumes this fact. Otherwise, the State must address the applicability of *Moffitt* in the context of an attorney's duties on termination or withdrawal. As the facts of Prisoner's case indicate, this latter issue is present in this case. Also, the State's argument assumes that the court-appointed counsel had no obligations after May 31 assumed by his appointment or by agreement.

9. A prerequisite of this Court's jurisdiction is the existence of a case or a controversy which is justiciable. U.S.Const. art. III, § 2; *Aetna Life Ins. Co. v. Haworth*, 1937, 300 U.S. 227, 239-41, 57 S.Ct. 461, 81 L.Ed. 617. For this reason, federal courts refuse to consider a case or a controversy of a non-concrete or hypothetical nature. "It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an *opinion advising what the law would be upon a hypothetical state of facts*. (Emphasis added). Aetna Life Ins. Co., *supra* at 241, 57 S.Ct. 461. Under the facts extant in Prisoner's case, the "if" voussoir binding the State's argument together is hypothetical: a substitute counsel *agreed* to take Prisoner's case and *was substituted*. The result is an argument based on a nonexistent factual context. Where a concrete case exists, this Court will not and may not resolve a hypothetical case.

10. Since two essential propositions of this argument are absent, which of the attorneys should have acted during this period is not considered. It is sufficient to re-emphasize that an attorney's duty to a client does not necessarily and immediately end or begin with the discrete formality of a letter or a motion. Somewhat more passive, yet affirmative, duties may remain or arise over the client representation continuum when possible prejudice to a prisoner's case should be recognized. In this case, all counsel knew a thirty-day petitioning period existed and that Prisoner was relying on their adequate representation.

wyrd be done", adequate representation by counsel requires more than the unknown path fate provides.

Based on the foregoing, sufficient evidence in the record exists under F.R. Civ.P. 52(a) supporting the District Court's determination that Prisoner's right to petition for certiorari was frustrated denying him effective assistance of counsel.[11]

The District Court had ample basis for its order.

AFFIRMED.

11. *Webb v. Beto*, 5 Cir., 1966, 362 F.2d 105, *cert. denied*, 385 U.S. 940, 87 S.Ct. 307, 17 L.Ed.2d 219; *Smith v. Heard*, 5 Cir., 1963, 315 F.2d 692, *cert. denied*, 375 U.S. 883, 84 S.Ct. 154, 11 L.Ed.2d 113. The District Court made the following findings of fact or conclusions of law in its order:

(1) Prisoner's failure to timely petition for certiorari was not occasioned by him.

(2) The failure was occasioned by the State of Florida.

(3) Because of his indigency, Prisoner was forced to rely on court-appointed counsel.

(4) Prisoner expressed his desire to seek further review of his conviction.

(5) Failure of the State system to timely act and the resulting frustration of Prisoner's right to seek a writ of certiorari constitutes ineffective assistance of counsel denying Prisoner due process and equal protection of the laws under the Fourteenth Amendment of the United States Constitution.

Adm. Office, U.S. Courts—West Publishing Company, Saint Paul, Minn.

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

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November 22,1976

TO ALL COUNSEL OF RECORD

NOV 29 1976

ATTORNEY GENERAL
MIAMI OFFICE

NO. 75-3861 - Nathaniel Pressley v. Louie L. Wainwright, etc.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Susan M. Steward
Deputy Clerk

/sms/
cc: Mr Joel D. Rosenblatt
Mr. Bennett H. Brummer

DOCKETED

BEST COPY AVAILABLE